

**Country Manor Rehabilitation and Nursing Center  
and Service Employees International Union, Local  
285, AFL-CIO.** Cases 1-CA-34757 and 1-  
CA-35025

April 22, 1999

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND  
HURTGEN

On September 18, 1998, Administrative Law Judge Raymond P. Green issued the attached decision. The Charging Party filed exceptions and a supporting brief and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

*Lucy Reyes, Esq.* and *Scott Burstein Esq.*, for the General Counsel.

*Thomas R. Gibbons, Esq.*, for the Respondent.

*Bryan C. Decker, Esq.*, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Boston, Massachusetts, on July 1 and 2, 1998. The charge and amended charge in Case 1-CA-34757 were filed on November 22, 1996, and April 9, 1997. The charge in Case 1-CA-35025 was filed on March 7, 1997. A charge was also filed against the Union in Case 1-CB-8928 by an individual employee named Robert Morse but this was settled before the hearing opened and the General Counsel moved to sever that case from the present ones. The consolidated complaint alleged inter alia

1. That on or about October 17, 1996, the Employer by its assistant director of nurses, Donna Pratt, encouraged and solicited employees to sign a decertification petition which was going to be circulated.

2. That in or about November 1996, the Employer by its director of nurses, Deidre Bowman, encouraged and solicited employees to sign the decertification petition, promised that it would terminate a shop steward if the Union was voted out, and promised that the employee would have continued employment.

<sup>1</sup> The Union has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

3. That on or about February 24, 1997, the Employer by its representative at a negotiation session, threatened employees with unspecified discipline.

4. That in October and November 1996, the employer failed to discipline Robert Morse because of his support and activities in favor of the decertification petition.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Employer admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The Employer operates a 123-bed nursing home in Newburyport, Massachusetts, and has recognized the Union about 20 years. There are about 150 represented employees employed by the Respondent and about 100 are in the nursing department. (RNs, LPNs, and CNAs, etc.) The bargaining unit consists of:

All full-time and regular part-time registered nurses, licensed practical nurses, orderlies, nurse's aides, restorative aides, laundry employees, housekeeping employees, third cook, dietary employees, and maintenance employees employed by Country Manor at its 18 Low Street, Newburyport, Massachusetts location, but excluding all casual employees, temporary employees, office clerical employees, administrator, recreation director, activities director, assistant activities director, guards, department heads, first and second cooks and all other supervisors as defined in the National Labor Relations Act.

Although the evidence indicates that charge nurses might be borderline supervisors, they have been included in the unit. Robert Morse was a charge nurse who was hired in or about September 1996. The Union contends that Morse, on various occasions, acted belligerently and used vulgar language to at least four certified nurses aids (CNAs) during September and October 1996.

There was a 2-year contract in effect during the time that the events here transpired. That agreement has since been superseded by another contract which runs from July 29, 1997, to July 28, 1999. Among other things, the collective-bargaining agreements permit the Union to have shop stewards and allows nonemployee representatives of the Union to have access to the facility. There was no evidence suggesting that the relationship between the Company and the Union has been particularly adversarial.

Apparently, there were some efforts in the autumn of 1996, by some unnamed individuals, to convince employees to get rid of the Union. The record indicates that some slips of paper whereby employees could indicate their interest in ousting the Union, were left in patient charts. But when this was brought to the attention of management, Northrup expressed his surprise and indicated that this type of activity should not take place. This seems to have stopped immediately. There is no evidence as to who distributed the pieces of paper and insofar as this record shows, the only person who actively solicited employees to get rid of the Union was a nonsupervisory employee in the

payroll department. It may be that Robert Morse was involved in efforts to decertify the Union, but no evidence was produced to prove that this was the case. Nor was any evidence produced to show if or when the Company was aware of any of his purported antiunion activities. (There also was no evidence to suggest that the company mistakenly believed that Morse was involved in antiunion activities).

A decertification petition was filed in Case 1-RC-1845 on November 27, 1996, by Jeff Lutz, who listed his job as a CNA. On May 14, 1997, the Acting Regional Director dismissed the petition on the grounds that a consolidated complaint had been issued alleging that the Employer violated Section 8(a)(1) of the Act by "encouraging and soliciting some of the same bargaining unit employees who are involved in this matter to sign the showing of interest that was used by you to support the filing of this decertification petition." Thereafter, on June 6, 1997, the Acting Regional Director wrote a letter to the parties to the decertification case stating that the dismissal letter should have indicated that the petition was subject to reinstatement if appropriate, on the resolution of the related unfair labor practice charge in Case 1-CA-34757. As a consequence, the representation case has been held in abeyance for more than a year.

As this record shows, despite the filing of the decertification petition, the Company continued to bargain with the Union and, as noted above, a new contract was reached.

In substance, the evidence presented by the General Counsel showed at most, (a) that there was one incident where one employee was solicited to sign a decertification petition; (b) there was one alleged statement to one employee by a supervisor that "they" or "we" were going to file a petition to decertify the Union; (c) that charge nurse Robert Morse may have been treated more leniently than other employees for cursing at employees under his direction, and (d) that in February 1997, the Employer's counsel, at a bargaining session, may have threatened "repercussions" because it appeared to him that Union Representative Wilson was in possession of legally confidential patient information. There was no evidence presented that *any* employees who signed cards or petitions that formed the basis of the decertification petition's showing of interest were solicited by any managerial or supervisory person employed by the Respondent. Moreover, notwithstanding the fact that union representatives are on site as stewards and that nonemployee representatives have access to employees at this facility, there was a decided paucity of witnesses to support the Union's allegations.

#### *A. Robert Morse*

The General Counsel alleges that the Respondent discriminated against prounion employees by failing to impose some sort of disciplinary action against Charge Nurse Robert Morse, who in the course of giving instructions to two CNA's, allegedly yelled and used inappropriate language. The General Counsel theorizes that the Respondent should have imposed discipline on Morse for these alleged actions and did not do so because he was a supporter of the decertification petition.

I am going to recommend that this allegation be dismissed because, among other things, the predicate for this theory was not proven. Neither the Union nor the General Counsel has presented any evidence to show that Morse supported the decertification petition or was, in fact, interested in getting rid of the Union. There was no evidence that the Company knew of such unproved activities and no evidence was presented to

show that it mistakenly believed that Morse was either sympathetic or active in the effort to get rid of the Union. That being the case, there is simply no reason to discuss or evaluate whether the employer's actions vis-a-vis Morse were consistent with what it normally did in other similar situations. (In fact management's response, which encouraged the employees to act like adults and work it out themselves, was not, in my opinion, inappropriate to the alleged situation.)

#### *B. Alleged Decertification Solicitations*

Kristin Leigh Anderson, a former employee, testified that on October 17, 1996, she attended a wound seminar in Danvers, Massachusetts, with Supervisors Donna Pratt (assistant director of nursing) and Diane Hall. She testified alternatively that during lunch Pratt, in response to some questions about unions, told her that "they" or "we" would be passing around a decertification petition for employees to sign in order to get rid of the Union. At this point according to Anderson, Diane Hall "elbowed" Pratt indicating that she should keep quiet.<sup>1</sup>

Both Pratt and Hall denied the assertion made by Anderson, testifying that most of the conversation at lunch was with nurses from other organizations. In my opinion, their denials were credible and I note that there is simply no evidence, other than the testimony of Cindy Adams (discussed below), that any managers or supervisors had anything to do with the decertification petition or went around soliciting employees to support it. I also note that even if credited, Anderson's account does not, in my opinion, amount to a solicitation to sign or support a decertification petition.

The only evidence of a direct solicitation was provided by employee Cindy Adams. She testified that in late November 1996, she reported to Deidre Bowman, the director of nursing, that she was being harassed by Shop Steward Diane Estabrook. Adams testified that Bowman responded that the Company could get rid of Estabrook if the Union was decertified. At this point, according to Adams, Bowman told her to go find someone who was passing out petitions and sign one. Although Hall was in the vicinity of the conversation, she did not participate in it and could not relate what was said between Bowman and Adams. Adams was uncertain as to when this alleged conversation took place and there is the distinct possibility that she conflated this conversation with a similar conversation on the same day that she had with Linda Colby, another nonsupervisory employee.

Bowman credibly testified that Adams had complained to her about some alleged harassment by Estabrook. As Bowman understood that Adams was worried about retaining her job position, she assured Adams that she had nothing to worry about. In my opinion, Bowman's testimony was credible and I do not believe that she either solicited Adams to sign or support a decertification petition or made any promise in consideration of her support for a decertification petition. I note, among other things, that the testimony of Adams was *sui generis* and was not supported by similar testimony from any other employee at the nursing home. Assuming that employees were solicited by

<sup>1</sup> Initially, Anderson testified that Pratt said that "they" were going to file a decertification petition and she assumed that Pratt meant that "they" referred to management. However, if Pratt used the word "they" this could also mean that she simply was aware that some employees were going to try to file such a petition. Anderson testified that Pratt said that "we" were going to file a decertification petition, only after being asked leading questions.

management to sign decertification petitions, one would expect to find more than one such employee among the more 100 plus bargaining unit employees.

*C. The Alleged Threat*

A negotiating meeting was held on February 24, 1997, wherein there was discussion of the issue of staffing. At some point, Union Negotiator Kimberly Wilson, apparently reading from some document, made reference to the situation of a particular patient to illustrate the Union's point that staffing levels were insufficient. Wilson's testimony was that the Company's chief negotiator, Eric Nadworny, stated in a loud voice, that the Union was violating patient confidentiality and that there would be "repercussions" for this violation. None of the other people who participated on the Union's negotiating committee testified to corroborate Wilson's testimony, and her negotiation notes made contemporaneous with the meeting, do not reflect any such threat.

Nadworny credibly testified that he did assert that the Union was violating confidentiality policies but denies making any threats. His testimony was corroborated by other persons who participated in the negotiations. In fact, there were not repercussions taken as a result of this incident, except that the Company reposted its rules governing patient confidentiality that are

consistent with Federal and state laws governing the operation of nursing homes.

There may be situations in a labor relations context, where patient privacy rights might yield to the rights of employees to bargain collectively. (Such as a union request for patient information which might be relevant in the context of a grievance proceeding.) But as I credit Nadworny's testimony, this is not the time to consider such matters in the abstract.

CONCLUSION OF LAW

Based on the above, and on the entire record, I conclude that the Respondent has not violated the Act in any manner as encompassed by the complaint. Accordingly, I issue the following recommended<sup>2</sup>

ORDER

The complaint is dismissed.

---

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.